

## Live-In Relationship—An Analysis Through Cases

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### ABSTRACT

*Live - in - relationship is a living arrangement in which an unmarried couple lives together under the same roof in a long term relationship that resembles a marriage. This is nowadays being taken as an alternative to marriage especially in the metropolitan cities. Although there is no legal definition of living together, it generally means to live together as a couple without being married. This form of living together is not recognized by Hindu Marriage Act, 1955 or any other statutory law. The Indian law does not provide any rights or obligations on the parties in live relationship. The status of the children born during such relationship is also unclear and therefore, the court has provided clarification to the concept of live in relationships through various judgments. The article seeks to gauge the current legal status of live-in relationship in India. The article also tries to look into recent developments in the attitude of the Courts in granting various rights to live-in partners in India through judgments and also makes a comparative analysis of the trend in other legal systems and jurisdictions.*

**Key words-**Marriage, Parties, Children, Indian laws, Courts

In India, there exists only one kind of relationship between an unrelated couple of a male and female and that is “Marriage”. **Marriage**, also called as matrimony or wedlock, is a socially/ritually recognized union or contract between spouses that establishes certain rights and legal obligations towards each other. Marriage is more of a sacrament and a divine concept and has been practiced since ages. But for number of reasons, this concept is losing its divineness. Love cannot be the only reason to marry. Sometimes in arranged marriages couples do get married but have no compatibility and marriage becomes more or less a compromise. While the institution of marriage promotes adjustment; the foundation of live in relationships is individual freedom. Times are changing and we are in the twenty first century. Traditional forms of relationships and institutions are slowly losing their foothold. No more are the notions of celibacy until marriage or even marriage as prevalent as they were. Women and men are slowly embracing other, non-conventional, non-traditional forms of relationships, most of which are still seen as a freak concept by mostly by the older generation, but also a surprising amount of younger generation. As is the case with most new things, it is seen with fear and is not really understood. As an example of this, we can see the paranoia and misconceptions around live in relationships.

### CONCEPT OF LIVE IN RELATIONSHIP:

Live - in - relationship is a living arrangement in which an unmarried couple lives together under the same roof in a long term relationship that resembles a marriage. This is nowadays being

taken as an alternative to marriage especially in the metropolitan cities. Although there is no legal definition of living together, it generally means to live together as a couple without being married. This form of living together is not recognized by Hindu Marriage Act, 1955 or any other statutory law. Therefore, there is no specific law on the subject of live in relationships in India. There is no legislation to define the rights and obligations of the parties to a live in relationships, the status of children born to such couples. There is no legal definition of live in relationship and therefore the legal status of such type of relationships is also unsubstantiated. The Indian law does not provide any rights or obligations on the parties in live relationship. The status of the children born during such relationship is also unclear and therefore, the court has provided clarification to the concept of live in relationships through various judgments. The court has liberally professed that any man and women cohabiting for a long term will be presumed as legally married under the law unless proved contrary. Currently, the law is unclear about the status of such relationship though a few rights have been granted to prevent gross misuse of the relationship by the partners.

Legalizing live in relationship means that a totally new set of laws need to be framed for governing the relations including protection in case of desertion, cheating in such relationships, maintenance, inheritance etc. Litigation would drastically increase in this case. The article seeks to clarify the current legal status of live-in relationship in India. The article also tries to look into recent developments in the attitude of the Courts in granting various rights to live-in partners in India through judgments and also makes a comparative analysis of the trend in other legal systems and jurisdictions

## JUDICIAL TRENDS OF LIVE-IN-RELATIONSHIPS

The Fundamental right under Article 21 of the Constitution of India grants to all its citizens “right to life and personal liberty” which means that one is free to live the way one wants. Live in relationship may be immoral in the eyes of the conservative Indian society but it is not “illegal” in the eyes of law. Indian judiciary is neither expressly encouraging nor prohibiting such kind of live-in-relationships in India. The judiciary is only rendering justice in accordance with law in a particular case. The main concern of the judiciary is to prevent the miscarriage of justice. The judiciary in deciding the cases keeps in mind the social mores and constitutional values.

The first case in which the Supreme Court of India first recognized the live in relationship as a valid marriage was that of *Badri Prasad vs. Dy. Director of Consolidation*<sup>i</sup>, in which the Court gave legal validity to the a 50 year live in relationship of a couple. The Allahabad High Court again recognized the concept of live in relationship in the case of *PayalKatara vs. Superintendent, NariNiketanand others*<sup>ii</sup>, wherein it held that live in relationship is not illegal. The Court said that a man and a woman can live together as per their wish even without getting married. It further said that it may be immoral for the society but is not illegal.

Again in the case of *Patel and Others*<sup>iii</sup>, the Supreme Court has held that live in relationship between two adults without marriage cannot be construed as an offence. It further held that there

is no law which postulates that live in relationships are illegal. The concept of live in relationship was again recognized in the case of *Tulsa v. Durghatiya*<sup>iv</sup>.

In case of *S. Khushboovs Kanniammal & Anr.*<sup>v</sup>, the south Indian actress Khushboo Had endorsed live in relationship, 22 criminal appeals were filed against her which the Supreme Court quashed saying that how can it be illegal if two adults live together, in their words “living together cannot be illegal. If two adult people want to live together what is the offence?” “If two people, man and woman, want to live together, who can oppose them? What is the offence they commit here? This happens because of the cultural exchange between people,” a special three-judge bench of chief justice of India K.G. Balakrishnan, justices Deepak Verma and B.S. Chauhan observed.

**The Supreme Court of India had thrown its weight behind live in relationships – a practice that is often frowned upon because of what could perhaps be called miscomprehended notion amongst a large chunk of our population about morality and ethical values.** Despite its inevitable failure to change such mindset amongst a sizable chunk of the population, the SC’s ruling was rather a significant one because it provided couples living in such arrangement with the much needed protection of the law of the land.

While the year 2010 saw a number of judgments related to live-in relationships, which includes, clear declaration by the Supreme Court that a live-in relationship is not illegal and grant of maintenance to a woman in live-in relationship. Live-in relationship is one of the areas which is under criticism and highly debated regarding its legality and implication on the societal relationships. Long term cohabitation between two major man and woman has long been equated to a valid marriage. The Courts have taken the view that where a man and a woman live together as husband and wife for a long term, the law will presume that they were legally married unless proved contrary as laid down long back by the Privy Council in the case of *A Dinohamyvs WL Blahaman*<sup>vi</sup>. In *InndraSarma vs. V.K.V.Sarma, 2013*<sup>vii</sup>

The recent judgment of the Supreme Court has illustrated five categories where the concept of live in relationships can be considered and proved in the court of law. Following are the categories:

1. Domestic relationship between an adult male and an adult female, both unmarried. It is the most uncomplicated sort of relationship
2. Domestic relationship between a married man and an adult unmarried woman, entered knowingly.
3. Domestic relationship between an adult unmarried man and a married woman, entered knowingly. Such relationship can lead to a conviction under Indian Penal Code for the crime of adultery
4. Domestic relationship between an unmarried adult female and a married male, entered unknowingly
5. Domestic relationship between same sex partners ( gay or lesbian)

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## POSITION OF FEMALE PARTNERS

The status of the female partner remains vulnerable in a live in relationship given the fact she is exploited emotionally and physically during the relationship. Different court judgments have discussed on different disputes pertaining to live-in relationships. *The Domestic Violence Act* provides protection to the woman if the relationship is “in the nature of marriage”. First time by *Protection of Women from Domestic Violence Act, 2005* the legislator has accepted live in relationship by giving those female who are not formally married, but are living with a male person in a relationship, which is in the nature of marriage, also akin to wife, though not equivalent to wife. This proviso, therefore, caters for wife or a female in a live in relationship. Live-in relationships are now considered at par with marriage under a new Indian law pertaining to domestic violence. The provisions of the *Domestic Violence Act, 2005* are now extended to those who are in live-in relationships as well. The amendments intend to protect the victims of domestic abuse in live-in relationships. Section 2 (g) of the aforementioned Act provides that a relationship between two individuals who live together or have lived together in the past is considered as a domestic relationship. A woman who is in a live-in relationship can seek legal relief against her partner in case of abuse and harassment. Further, the new law also protects Indian women who are trapped in fraudulent or invalid marriages.

In June, 2008, The National Commission for Women recommended to Ministry of Women and Child Development made suggestion to include live in female partners for the right of maintenance under *Section 125 of Code of Criminal Procedure*. This view was supported by the judgment in *Abhijit Bhikase Auti v. State Of Maharashtra and Others*<sup>viii</sup>. The positive opinion in favour of live in relationship was also seconded by Maharashtra Government in October, 2008 when it accepted the proposal made by Malimath Committee and Law Commission of India which suggested that if a woman has been in a live-in relationship for considerably long time, she ought to enjoy the legal status as given to wife. However, recently it was observed that it is divorced wife who is treated as a wife in context of *Section 125 of Code of Criminal Procedure* and if a person has not even been married i.e. the case of live in partners, they cannot be divorced, and hence cannot claim maintenance under *Section 125 of Code of Criminal Procedure*.

*Section 125 Cr.P.C.* provides for giving maintenance to the wife and some other relatives. The word ‘wife’ has been defined in *Explanation (b) to Section 125(1) of the Cr.P.C.* as follows; “Wife includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.” It was stated, “Law inclines in the interest of legitimacy and thumbs down ‘whoreson’ or ‘fruit of adultery.’” Four important grounds are laid for live-in relationship to be recognized as a relationship in the nature of Marriage. When a live-in partner satisfies these four conditions in addition to living together under one roof, only then a deserted woman can seek Maintenance. This judgement is drawn the Ruling of a California Court in the US which had ordered similar relief by invoking the doctrine of a “Palimony”.

These four conditions are:

1. A live-in couple must hold themselves out to Society as being akin to spouses.
2. They must be of legal age to marry.



3. They must be unmarried or
4. Be otherwise qualified to enter into a legal marriage.

They must have voluntarily cohabited and held themselves out to World as being akin to spouses for a significant period of time. But, in *Varsha Kapoor vs UOI & Ors.*<sup>ix</sup>, the Delhi High Court has held that female living in a relationship in the nature of marriage has right to file complaint not only against husband or male partner, but also against his relatives.

At present there is no existing legal framework which regulates the concept of live in relationships in India. *The Hindu Marriage Act, 1955* does not recognise live in relations and nor does the Code of Criminal Procedure of India. The only act which has implied the existence of live in relationships is the protection of women from *Domestic Violence Act, 2005 (PWDV)*. For the purpose of protection and maintenance to women, an aggrieved live in partner may be granted alimony under the act.

A bare reading of this act reveals to us the following:

Section 2(f) of the act defines a 'domestic relationship' to mean "a relationship between two persons who live, or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family." The phrase 'in the nature of marriage' covers in its ambit live in relations or cohabiting. Unfortunately, it has not been defined in the act but left to the courts for interpretation. The Supreme Court in the case of *D. Velusamy v. D. Patchaiammal*<sup>x</sup>, held that, a 'relationship in the nature of marriage' under the *2005 Act* must also fulfil some basic criteria. Merely spending weekends together or a one night stand would not make it a 'domestic relationship'. It also held that if a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage'. The Supreme Court further opined that the Parliament has drawn a distinction between the relationship of marriage and the relationship in the nature of marriage, and has provided that in either case the person is entitled to benefits under the *Domestic Violence Act, 2005 (PWDV)*. The court reflecting upon live-in relationships becoming frequent in India, the Court has pointed out that no legal entitlements occur by such relationship. It is clear that no maintenance is available to a concubine under law in India.

The Supreme Court was dealing with the claim of maintenance by a woman claiming to be a wife in view of a live-in relationship for some year (about which we have already written noting a High Court decision). The Court ruled that the concept of palimony which applied to such relationships was not recognized in India and even though the *Domestic Violence Act* recognized live-in relationship to some degree, not all such relationships were entitled for maintenance unless they satisfied the conditions stipulated by the Court.

In the *Act of 2005*, the Parliament has taken notice of a new social phenomenon which has emerged in our country known as live-in relationship. This new relationship is still rare in our country, and is sometimes found in big urban cities in India, but it is very common in North America and Europe. It has been commented upon by Supreme Court in the case of *S. Khushboo vs. Kanniammal & Anr*)<sup>xi</sup>.

The recent judgment of the Supreme Court *IndraSarma vs. V.K.V.Sarma*, in 2013 the Supreme Court has clarified several points and given a few guidelines to be followed in the absence of a dedicated law. These guidelines will serve the purpose of bringing such relationships under the *Domestic Violence Act, 2005*.

The Supreme Court illustrated five categories where the concept of live in relationships can be considered and proved in the court of law. Following are the categories:

1. Domestic relationship between an adult male and an adult female, both unmarried. It is the most uncomplicated sort of relationship
2. Domestic relationship between a married man and an adult unmarried woman, entered knowingly.
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4. Domestic relationship between an unmarried adult female and a married male, entered unknowingly
5. Domestic relationship between same sex partners ( gay or lesbian)

The Court stated that a live-in relationship will fall within the expression "relationship in the nature of marriage" under **Section 2(f)** of the *Protection of women Against Domestic Violence Act, 2005* and provided certain guidelines to get an insight of such relationships. Also, there should be a close analysis of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into account, including the individual factors.

## STATUS OF THE CHILD

But at the same time the court has considered important to protect child rights in particular in live-in relationships. In January 2008, a Supreme Court bench that was headed by Justice Arijit Pasayat held that children who are born out of live-in relationships will not be considered illegitimate. In August 2010, the Supreme Court held that a live-in relationship that has existed for a long time will be considered a marriage and that the children born to such a couple will not be illegitimate. Justice P Sathasivam and Justice BS Chauhan of the Supreme Court passed this judgment and it will have strong legal implications on disputes relating to the legitimacy of children who are born to live-in partners.<sup>xii</sup>

## INTERNATIONAL SCENARIO

### United States of America:

Prior to 1970, live-in relationship i.e. Cohabitation was illegal in US, but went on to gain status as a Common Law, subject to certain requirements prescribed under law. The American legal history is a witness to several consensual sex legislations, which paved the way for living together contracts and their cousins, the "prenuptial agreements".

In USA, the expression 'palimony' was coined which means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying him, and is then deserted by him. Partners in a live-in relationship do not have the right to inherit each other's property, as is the case for married couples. However, property can be willed to each other.

In United States in 1976, the California Supreme Court decided *Michelle Marvin v. Lee Marvin*<sup>xiii</sup>, holding that agreements between cohabiting couples to share income received during the time they live together can be legally binding and enforceable. The highly publicized suit between actor Lee Marvin and his live-in companion, Michelle Triola Marvin, was the first of a series of "palimony" suits that have become more numerous since the 1980s. After their breakup, Michelle Triola legally adopted the surname Marvin despite never having been married to him, and claimed he had promised to support her for the rest of her life. In the end, in *Marvin v. Marvin*, the California Supreme Court ruled that Triola had not proven the existence of a contract between herself and Mr. Marvin that gave her an interest in his property. Thus, the common law rule applied to the situation without alteration, and she took away from the relationship and the household what she brought to it.

However, the New Jersey Supreme Court in *Devaney vs. L'Esperance*<sup>xiv</sup> held that cohabitation is not necessary to claim palimony, rather it is the promise to support, expressed or implied, coupled with a marital type relationship, that are indispensable elements to support a valid claim for palimony. A law has now been passed in 2010 by the State legislature of New Jersey that there must be a written agreement between the parties to claim palimony.

In *Trimble v. Gordon*<sup>xv</sup>, the court held that a signed statement establishing paternity of a child born out of wedlock is adequate protection of the child's inheritance rights. In *Braschi v. Stahl Associates*<sup>xvi</sup>, New York State's highest court found the term family should be construed broadly and should encompass contemporary realities, including unmarried adult partners in a long-term, committed relationship that shows mutual sharing of the mundane tasks of everyday life.

Since the 1980s, a growing number of states and municipalities have passed laws allowing unmarried couples, both heterosexual and homosexual, to register as domestic partners. Some cities have established a domestic partner registry, while others extend certain benefits to domestic partners even if the city does not provide a registry. In the USA, the proportion of births outside of marriage has risen to almost 40 percent, according to recent federal data. Couples can agree to a Cohabitation Agreement, which outlines their financial responsibilities towards each other as well as remedies for a split.

Some states have common-law marriage laws. These refer to legal marriage by default due to an unmarried couple's actions. These normally involve living together for more than a year and presenting themselves to the outside world as husband and wife. The country has institutionalized cohabitation by giving cohabiters essentially the same rights and obligations as married couples, a situation similar to Sweden and Denmark.

#### Canada:

In Canada, cohabitation is officially recognized as "common law marriage". In a lot of cases, the federal law of the country grants common law couples the same rights as married couples. All

common law live in couples enjoy legal sanctity if they have lived together for a minimum of 12 consecutive months, or they give birth to/adopt a child.

## France:

In France, a *pacte civil de solidarité* or a civil pact of solidarity commonly known as a **PACS**, is a form of civil union between two adults (same-sex or opposite-sex) for organising their joint life. It brings rights and responsibilities, but less so than marriage. From a legal standpoint, a **PACS** is a contract drawn up between the two individuals, which is stamped and registered by the clerk of the court. Since 2006, individuals who have registered a PACS are no longer considered single in terms of their marital status. Their birth records will be amended to show their status as *pacsé* (in a **PACS**) as well.

## Phillippines:

In Philippines, live in relationship couple's right to each other's property is governed by co-ownership rule. **Article 147, of the Family Code**, Philippines provides that when a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership. It mainly concerns itself with properties acquired through their actual joint contribution, which could be money, property or industry owned by them in common. The Family Code expressly governs the property of persons cohabiting without the benefit of marriage. It is required, however, that both must be capacitated, or have no legal impediment, to marry each other.<sup>xvii</sup>

## United Kingdom:

In United Kingdom, both parents are financially responsible for the children whether they were married, co-habiting or separated. Parents do not generally have the inheritance rights over each other's property unless they are in the Will. This, however, can be contested. Live-in couples are not legally obliged to support each other financially even if they are sharing a house or raising a family together. Unlike married couples, they are not entitled to receive Maintenance from their partners even if they have lived together for a number of years or given up their career to look after the home and children. An unmarried couple can formalise aspects of their status by drawing up a cohabitation contract or living together agreement, which outlines the rights and obligations of the partners toward each other. The Lesbian, Gay, Bisexual and Transgender (LGBT) community which doesn't have marriage rights can enter into a civil partnership. Every child born to a married woman is assumed to be her husband's child and both have parental responsibility whereas in the case of a live in relationship, the unmarried mother or father has responsibility of a child but can enter into a parental responsibility agreement with the partner for shared responsibility. Both married and cohabitating couples can apply to adopt a child jointly.

With regard to inheritance, even if there is no will, the child of unmarried or married parents has a legal right to inherit from both parents and families of both parents. If either married partner dies without making a will, the other will inherit all or some of the estate whereas in case of cohabitating couples if one partner dies without leaving a will, the surviving partner will not



automatically inherit anything unless the couple owned property jointly. If one inherits money or property from an unmarried partner, they are not exempt from paying inheritance tax, as married couples are. Thus, we see that the concept of a live in relationship has been acknowledged and dealt with in the UK.

**Scotland:**

The live in relation were conferred legal sanctity in Scotland under Family Law (Scotland) Act 2006. Section 25 (2) of the Act postulates that a court of law can consider a person as a co-habitant of another by checking on three factors, namely,

- a. The length of the period during which they lived together,
- b. The nature of the relationship during that period and
- c. The nature and extent of any financial arrangements.

**Ireland:**

Even though living together is legally recognized in Ireland, public opinions are strictly against a new legislation that aims to facilitate legal rights for “separated” *cohabitating couples* to demand maintenance and/or share their property with the financially dependent partners. The legislation is applicable to same sex unmarried couples as well as couples from opposite sexes, provided they have been cohabitating for at least 3 years (or 2 years if they have children). The government, with this new legislation, plans to fetch financial and legal protection for financially dependent and vulnerable cohabitants in the event of break up or death.

**Australia:**

The Family Law Act of Australia states that a “de facto relationship” can exist between two people of different or of the same sex and that a person can be in a de-facto relationship even if legally married to another person or in a defacto relationship with someone else.

**China:**

In China, there is no legal procedure required to end a live-in-relationship. Children born out of wedlock have equal rights to those born to parents who are married. Contracts are made between couples in a live-in relationship.

**CONCLUSION**

Live in relationship has always been the focus of debates and discussions as it is challenging our fundamental societal system. To encourage marriages, Government has reserved many rights for the married people. Although live in relationship is not considered as an offense but there is no law until the date that prohibits this kind of relationship. Courts often refused to make any kind of obligatory agreements between these unmarried couples as this could go against the public

policy. In India, presently there is no law defining live-in relationship. To sum up, let me write what Swami Vivekananda had said "It is very difficult to understand why in this country so much difference is made between men and women, whereas the *Vedanta* declares that one and the same conscious self is present in all beings. You always criticize women, but say what you have done for their upliftment".

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#### ENDNOTES

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- <sup>x</sup>AIR 2011 SC 479.
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